

BILL ANALYSIS

Senate Research Center

H.B. 820
By: Cuellar (Ellis)
Jurisprudence
5-16-97
Engrossed

DIGEST

According to the Comptroller of Public Accounts, Texas spends nearly \$10 billion a year on Medicaid. With more than 550,000 Medicaid claims from 120,000 providers processed in an average week, the implications of any fraudulent claims and their cost to taxpayers are staggering. Unfortunately, such offenses are difficult for the Attorney General's Office to detect. One way that other states have attempted to deal with the problem of health care fraud is through the authorization of citizen qui tam suits, which encourage the public to come forward with information. Qui tam statutes establish civil actions and recoverable penalties for acts such as health care fraud. These statutes also provide that part of such a penalty goes to the person who brings the action with the remainder going to the state or other institution. Thus, they are more attractive than Texas' current whistle-blower statutes, which only promise citizens proceeds from the Health and Human Services Commission funds, contingent on their availability.

H.B. 820 allows the attorney general to bring suit for the state under the federal qui tam statute, allowing individuals to file suit against wrongdoers on behalf of the government in cases involving Medicaid and Medicare fraud. It would also allow private persons to file qui tam suits for the violation of the Medicaid Fraud Prevention Act, and would allow the attorney general to participate in the suit and take certain actions.

PURPOSE

As proposed, H.B. 820 provides for certain legal actions by private persons and government agencies against persons defrauding the Medicaid program.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 36, Human Resources Code, by designating Sections 36.001, 36.002, and 36.007-36.012 as Subchapter A, renumbering Sections 36.007-36.012 as Sections 36.003-36.008, respectively, and adding a subchapter heading, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Chapter 36, Human Resources Code, by designating Sections 36.003-36.006 as Subchapter B, renumbering those sections as Sections 36.051-36.054, respectively, and adding a subchapter heading, as follows:

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

SECTION 3. Renumbers Section 36.004, Human Resources Code, as Section 36.052, and amends Subsection (e) to make a conforming change.

SECTION 4. Renumbers Section 36.005, Human Resources Code, as Section 36.053, and amends Subsection (b) to make a conforming change.

SECTION 5. Renumbers Section 36.009, Human Resources Code, as Section 36.005, by amending Subsection (a), and adding Subsection (c), to provide that a person under this section is considered liable under Section 36.052, if the person is found liable in an action brought under Subchapter C. Makes a conforming change.

SECTION 6. Amends Chapter 36B, Human Resources Code, by adding Section 36.055, as follows:

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. Authorizes the attorney general to bring certain actions as relator and to contract with a private attorney to represent the state.

SECTION 7. Amends Chapter 36, Human Resources Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

Sec. 36.101. ACTION BY PRIVATE PERSON AUTHORIZED. Authorizes a person to bring a civil action for a violation under Section 36.002, Human Resources Code, for the person and the state. Requires the action to be brought in the name of the state. Provides that a person who violates Section 36.002 is liable as provided by Section 36.052, in an action brought under this subchapter.

Sec. 36.102. INITIATION OF ACTION. Sets forth procedures for bringing an action under this subchapter.

Sec. 36.103. ANSWER BY DEFENDANT. Sets forth the deadline for a defendant to answer.

Sec. 36.104. CONTINUATION OR DISMISSAL OF ACTION BASED ON STATE DECISION. Sets forth deadlines for when the state will or will not continue with an action. Requires the court to dismiss the action if the state declines to take over the action.

Sec. 36.105. REPRESENTATION OF STATE BY PRIVATE ATTORNEY. Authorizes the attorney general to contract with a private attorney to represent the state in an action with which the state elects to proceed.

Sec. 36.106. INTERVENTION BY OTHER PARTIES PROHIBITED. Prohibits anyone other than the state to intervene or bring a related action under this subchapter.

Sec. 36.107. RIGHTS OF PARTIES IF STATE CONTINUES ACTION. Sets forth the rights of a party if the state continues an action. Authorizes the state to dismiss an action if certain provisions are met. Authorizes the state to settle an action. Sets forth requirements for settling an action. Provides certain limitations on a person bringing an action if the state's prosecution would be affected in certain ways. Provides for restriction on a person bringing an action if a defendant would be affected in certain ways.

Sec. 36.108. STAY OF CERTAIN DISCOVERY. Sets forth requirements of a stay of certain actions of discovery.

Sec. 36.109. PURSUIT OF ALTERNATE REMEDY BY STATE. Authorizes the state to pursue the state's claims through any alternate remedy available to the state. Provides that if the alternate remedy is pursued, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter. Provides that a finding of fact or conclusion of law in another proceeding that has become final is conclusive on all parties to an action under this subchapter. Sets forth conditions under which a finding or conclusion is final.

Sec. 36.110. AWARD TO PRIVATE PLAINTIFF. Entitles a person bringing an action under this subchapter to certain awards based on certain calculations.

Sec. 36.111. REDUCTION OF AWARD. Authorizes the court to reduce an award, dismiss a person from the civil action, or deny a person from receiving a share of the proceeds under Section 36.110 for committing Medicaid fraud.

Sec. 36.112. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION. Provides that Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

Sec. 36.113. CERTAIN ACTIONS BARRED. Prohibits a person from bringing certain actions under this subchapter. Defines "original source."

Sec 36.114. STATE NOT LIABLE FOR CERTAIN EXPENSES. Provides that the state is not liable for expenses for an action brought under this section.

Sec. 36.115. RETALIATION BY EMPLOYER AGAINST A PERSON BRINGING SUIT PROHIBITED. Provides an employee with certain entitlements for certain discriminatory actions taken by an employer. Authorizes a person to bring an action in district court for relief provided in this section.

Sec. 36.116. SOVEREIGN IMMUNITY NOT WAIVED. Provides that except as provided by Section 36.112, this subchapter does not waive sovereign immunity.

SECTION 8. Amends Chapter 531, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. MEDICAID FRAUD, MISUSE, OR OVERCHARGES

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, MISUSE, OR OVERCHARGES. Authorizes the Health and Human Services Commission (HHSC) to grant awards to persons reporting Medicaid fraud or overcharging, if the disclosure results in the recovery of the overcharges or termination of the fraud. Sets forth the requirements regarding determination of the amount of the award and appropriation of the award. Provides that payment under this section from federal funds is subject to permissible use under federal law of funds for this purpose. Provides that a person who brings an action under Chapter 36C, Government Code, is not eligible for an award under this section.

Sec. 531.102. ASSISTING INVESTIGATIONS BY ATTORNEY GENERAL. Sets forth the terms by which HHSC and the attorney general are required to execute a memorandum of understanding under which HHSC is required to provide investigative support as required to the attorney general in connection with certain cases.

SECTION 9. Requires the office of the attorney general to develop strategies to increase state recoveries. Requires the office to report the results of the office's effort to the legislature no later than September 1, 1998.

SECTION 10. Provides that this Act conforms Chapter 531, Government Code, to Section 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1995. Provides that this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 11. Provides that Section 531.102, Government Code, takes effect only if the transfer of employees of the Texas Department of Human Services and the Texas Department of Health to HHSC, as proposed by Section 2, S.B. No. 741, or similar legislation, is enacted by the 75th Legislature in regular session and becomes law.

SECTION 12. Requires the attorney general to study the benefits of using private attorneys to prosecute civil actions under Chapter 36, Human Resources Code. Requires the office to report the results of the office's study to the legislature not later than September 1, 1998.

SECTION 13. Authorizes the office of the attorney general to retain a reasonable portion of

recoveries under this Act, not to exceed amounts specified in the General Appropriations Act, for the administration of this Act.

SECTION 14. Effective date: September 1, 1997.

SECTION 15. Emergency clause.